

BEFORE THE GOVERNING BOARD
CAJON VALLEY UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving the Respondents Identified in
Appendix A.

OAH No. 2012020654

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 17, 2012, in El Cajon, California.

Anthony De Marco, Atkinson, Andelson, Loya, Ruud & Romo, represented Cajon Valley Union School District (District).

Fern Steiner, Tosdal, Smith, Steiner & Wax, represented 23 of the respondents.

There were no appearances by respondents Valerie Barnes, Jenna Krier, Brittany Lindsay, and Tracianne Olson.

Oral and documentary evidence was received and the matter was submitted on April 17, 2012.

FACTUAL FINDINGS

Jurisdiction

1. Janice Cook, Superintendent made and filed the accusation in her official capacity as the District's Superintendent.

2. Respondents are identified on Appendix A, attached hereto and by this reference incorporated herein. All respondents are certificated employees of the District.

3. On February 28, 2012, the Governing Board of the Cajon Valley Union School District (Board) adopted a resolution which directed the superintendent to notify all temporary employees that they would be released from employment. The resolution identified 101 temporary positions to be reduced.

4. On March 2, 2012, the Board adopted a resolution which reduced particular kinds of services and directed the superintendent to give appropriate notices to certificated employees whose positions would be affected by the action. The resolution identified 86.10 FTEs to be reduced.

Layoff Determinations

5. Consistent with the Board's Resolution, the District identified certificated employees for layoff. The decision to reduce or discontinue a particular kind of service is matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) A school district's decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

6. The District considered attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees. No evidence was presented that any known positively assured attrition was not considered. The District must issue final layoff notices before May 15, and when it does so it will take into account any additional attrition that has occurred. After that, further attrition will allow the District to rehire laid off employees. A question arose during the hearing regarding the vacancies created by the attrition which has occurred since March 15, but the district is not required to consider those vacancies for purposes of this hearing. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627.)

7. On or before March 15, 2012, the District timely served on Respondents a written notice that the Superintendent had recommended that their services would be terminated at the close of the current school year. The reasons for the recommendation were set forth in these preliminary layoff notices. The District served these notices on the temporary employees, as well, instead of merely releasing them, thereby affording them all rights of a permanent or probationary employee.

8. An accusation was served on each respondent. No evidence was introduced demonstrating that all prehearing jurisdictional requirements were not met.

District Testimony

9. Kari Hull, Assistant Superintendent Personnel Services, testified about the District's financial crisis and explained that the temporary teachers were funded by categorical and not general funds. She explained that those funds are determined on an annual basis, that there is no guarantee that funds will be received in a following school year or that the same amount of funding will be received from one year to the next. Although the evidence established that it was "most likely" that categorical funds currently received this school year will be received next year, the evidence also established that this is an uncertain

assumption. As the District is required to be fiscally responsible, its conservative approach of assuming it will not receive the same categorical funds next year was appropriate.

Stockton Analysis

10. The primary issue in this case was the application of *Stockton Teachers Association CTA/NEA v. Stockton Unified School District* (2012) 204 Cal.App.4th 406, mod., reh'g. den., to this proceeding. In that decision, the Third District Court of Appeal determined that a school district must strictly comply with the requirements of Education Code section 44909 in order for an employee to be classified as "temporary." A district's failure to do so will result in the employee being classified as "probationary." In that case, the Court of Appeal held that in order for a district to demonstrate that Section 44909 employees are "temporary," it must (1) show that the employees were hired to perform services under contract with public or private agencies or categorically funded projects, (2) identify the particular contract or project for which services were performed, (3) show that the particular contract or project expired, and (4) show that the employee was hired for the term of the contract or project. If the district does not demonstrate all four elements, the employee will be classified as probationary.

In contrast, the Fourth District Court of Appeal, the district court that governs this geographic region, held in *Haase v. San Diego Community College District* (1980) 113 Cal.App.3rd 913, that to interpret Section 44909 as affording probationary status to employees would make the language of the statute "superfluous" and would be at odds with the Legislative intent of preventing employees from attaining probationary status merely because they taught in a categorically funded program.

The rationale in *Haase* seems to make the better sense. Section 44909 states that the employee's service is only to be counted towards tenure for service if the employee worked at least 75 percent of the number of school days in the school year and was subsequently employed as a probationary employee. To afford the employee probationary status without either of those requirements having been met would confer upon that employee an unintended benefit clearly not contemplated by the Legislature.

In any event, Hull's testimony and the evidence presented in this case established that the District complied with the four *Stockton* requirements. The respondents were hired to perform services under contract with public or private agencies or categorically funded projects, the District identified the particular contract or project for which services were performed, Hull testified that the funding will expire at the end of the school year and must be reapplied for each year, and the respondents were hired for the term of the contract or project. Furthermore, none of the respondents were ever offered probationary contracts in the year after they finished their temporary service. Thus, none of the respondents were probationary employees. However, in an abundance of caution, the District served layoff notices to all of them, affording them even more procedural due process rights than those to which they were entitled. Doing so did not convert their status from temporary to probationary.

Although respondents argued that funding of the programs taught by respondents was provided year after year and the teachers repeatedly returned to those positions, the evidence established that funding was not certain, making it reasonable for the District to assume it may not receive that funding in subsequent school years, thereby making it necessary to terminate the temporary teachers at this juncture.¹

Final Layoff List

11. Respondents are not probationary or permanent employees. The District properly determined that they may be released. The District is not retaining any employee with less seniority to perform a service that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. A district may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. The decision to reduce or discontinue a particular kind of service is matter reserved to the district’s discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

4. Because of the reduction of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2012-2013 school year. The cause relates solely to the financial welfare of

¹ Although respondent’s brief asserted that any of the respondents who were previously employed as permanent or probationary teachers, laid off in prior RIFs, and then recalled from the District’s re-employment list, should be afforded the protections guaranteed by the Education Code and the case law, no evidence was introduced that any of these temporary employees had previously been so employed. If such evidence had been introduced, a different conclusion may have been reached consistent with applicable Education Code provisions and case law. (See: *In the Matter of the Reduction in Force of Certain Certificated Employees of Mountain View School District*, OAH Case No. 2011030959.)

the schools and the pupils thereof within the meaning of Education Code section 44949. The District has identified the certificated employees who are providing the particular kinds of services that the Board directed be reduced or discontinued. It is recommended that the Board give respondents notice before May 15, 2012, that their services will not be required by the District for the school year 2012-13.

RECOMMENDATION

It is recommended that the Board give notice to the respondents whose names are set forth below that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2012-2013 school year.

DATED: April 25, 2012

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix A

RESPONDENTS

The following certificated personnel will receive a layoff notice:

Last Name	First Name
Anderson	Mary
Barnes	Valerie
Begrin	Heather
Bowen	Danielle
Campbell	Lacey
Chavez	Juanita
Desilva	Allison
Dowell	Joshua
Hammond	Rachael
Jacobs	Andrea
James	Ashley
Kepler	Renee
Kolb	Julie
Krier	Jenna
Lindsay	Brittany
Menzies	Nora
Moore	Jennifer
Murphy	Caitlin
Nadlonek	Danielle
Olson	Tracianne
Pugmire	Johanna
Reese	Robin
Savage	Christa
Shewey	Nicole
Southard	Joanne
Thompson	Teresa
Torstrom	Erin
Valentine	Melissa
Van Rossum	Amy
Warriner	Dana
Wyer	Katie
Young	Bethany
Zepeda	Sarah